



ASEAN ECONOMIC COMMUNITY: BALANCING INVESTMENT AND SOCIO-ECONOMIC RIGHTS

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ABSTRACT

ASEAN Economic Community (AEC) promotes the development and economic welfare in ASEAN nation. Indonesia, on the other side, accept it as a big chance of investment. Through investment, the government hopes to achieve economic development. Policies, regulation, even deregulation has been made for a friendly investment. But, there is no guaranteed investment will also bring social welfare. Regulation not only as a tool for investment but also to protect socio-economic rights of people's. As the example, the regulation made for protecting the local worker, or employment opportunities. The regulation also provided for protection and empowerment for small and middle economies or the poverty alleviation. This condition will be the dilemma for the government to balance the investment and to fulfill socio-economic rights at the same time. Truly are UUDNRI 1945 already formulate to solve this dilemma. We can learn from article 33 UUDNRI 1945, about the idea to keep it economic development work together in harmony with the will to fulfill socio-economic rights. This paper focuses on seeing how regulation consistence in fulfills socio-economic rights in AEC Free Trade, with the normative method through legislation, social, and economic approach, The research result describe the regulations used for facing AEC dominate by investment design and forgot about socio-economic rights.

Key Words : ASEAN Economic Community, Investment, socio-economic rights

1. Introductions

ASEAN Economic Community is a big chance for empowering economic and welfare for Indonesia. This big chance then responded with investment. The condition then obligates the regulation to open easy requirement for the investment. Then the law is only to keep and push efficiency in economic.

The orientation of regulation to guarantee the foreign investment is has been done by Indonesia. As the example of the law number 25 the year 2007 about capital investment: 1) the equal treatment of foreign and local investors; 2) Nationalization or expropriation of property

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rights of investors are not possible, except by legislation; 3) foreign companies are given the flexibility to make the transfer and repatriation of foreign exchange; and 4) the business field wide open, except the production of arms and business fields that are prohibited by law.

As is also the perspective of investment incentives through regulation, not just passively provided by the state. The state also helps ensure the availability of investment incentives through the choice of law. E. Carbonara and F. Parisi, dividing the freedom of foreign investors in the choice of law, within three (3) forms:¹ 1) restrictive; 2) semi-restrictive, and 3) a liberal. When looked at from the provisions of Article 1338 Civil Code, the real contract in Indonesia is among the types of semi-restrictive. This is because the provisions of the article do not give full freedom on contract. Contracts must not violate any applicable law, contrary to morality and public order. But the perception of pro-investment thus can not be used as a basis for improved welfare for all Indonesian people.

Socio-economic inequality, always inversely related to the issue of economic growth. Pro investment does not guarantee the welfare and economic growth acquired simultaneously. This opinion was reinforced by Caroline L Paine in her research for 129 non-OCED countries with 500 thousand Populations, found globalization and foreign investment is not Followed by social and economic rights.² Such conditions then should be a reflection that the orientation of regulation not merely on economic growth.

States have a big responsibility to keep running an investment and ensuring social and economic rights of the people. The idea of the balance between investment and social protection of economic rights of the people has actually crystallized in Article 33 UUDNRI 1945. The orientation of the intended by Article 33 UUDNRI 1945 is the embodiment of the people's welfare, which is based on social and economic rights. But undeniably, the idea of well-being often can not be realized in other legislation, particularly in the economic field were vulnerable to pressures of the free market and globalization

Globalization and free market suppress the formation of law can deviate from ideas / ideals UUDNRI 1945. Andreas Follesdal said if the international rule or non-state actors, drastically influence, limiting and Strengthens the authority of the state to make their international and

¹ Emanuela Carbonara, dan Francesco Parisi, *Choice of Law and Legal Evolution: Rethinking The Market for Legal Rules*, Journal of Public Choice, Volume 139, 2009, Issue 3/4, Dodrecht: Springer Science & business, page 464.

² Caroline L Paine, *Bringing Home the Bacon or Not? Globalization and Government Respect for Economic and Social Rights*, Human rights review, 09/2009, Volume 10, Issue 3, Dordrecht Netherlands: Springer Science & Business Media, page 426.

domestic policy.³ The major influence on national policy, worrying about the guarantee of socio-economic rights of the people of Indonesia. Whereas the socio-economic rights, specifically used for the challenges of the ASEAN Economic Community.

2. Materials and Methods

This paper uses the normative method, with a political approach, and economics. The purpose of this paper is to look at the consistency of the legislation, in ensuring socio-economic rights of the people, such as socio-economic rights of workers, basic service, and empowerment of small economies. This description is expected to be the basic orientation of economic growth based on the welfare of the Indonesian people, particularly in the face of the ASEAN free market.

3. Results

3.1 National Economy and Global Challenges

Influence and global challenges is a determinant factor in influencing the administration of the state. the strength of the relationship between countries, it can even form a joint global governance. The government is not just an effort to maintain peace. However, evolve as global economic governance that also affects the national economy.

Global efforts to strengthen governance by Daniel D Bradlow has thrived:⁴ First, they must have the same issue (development of the weakest society, and poorest individuals).⁵ Second, the respect of international law principals.⁶ Third, comprehensive coverage of needs of mechanism and institution must applicable to every interest and Involved stakeholders.⁷ Fourth, coordinated specialization where every actors and stakeholder consistent and support the needs of global economic governance.⁸ Such conditions could no longer make the independent national economy, without any intervention from outside the country.

Global pressure further confirmed its existence in a legal product. Frank J Garcia argue globalization can Affect in 4 (four) ways:⁹ a) changing the needs of the client (scope of needs is not interstate but wider across the nation); b) changing the substance of the law (law adapting and

³ Andreas Follesdal, *Global Distributive Justice? State Boundaries as a Normative Problem*, Global Constitutionalism, Volume 1 issue 2, July 2012, Cambridge: Cambridge University Press, page 275.

⁴ Daniel D Bradlow, *A Framework For Assessing Global Economic Governance*, Boston College Law Review, 05/2013, Volume 54, Issue 3, United State: Boston College School of Law page 982.

⁵ *Ibid*, page 982-983.

⁶ *Ibid*.

⁷ *Ibid*, page 989.

⁸ *Ibid*, page 990.

⁹ Frank J Garcia, *Introduction: Globalization, Power, States, and Role of The Law*, Boston College Law Review, 05/2013, Volume 54, Issue 3, United State: Boston College School of Law page 907-909.

response to society, in case of globalization and technology); c) Changing the nature of regulation; d) changing the purpose and role (globalization can make and Affect state, to create strong vs. weak law). The necessity of adjustment of product legislation is also revealed by Van Der Vlies. Van Der Vlies, argues if the legislative bodies must create the which is the lawsuits to the global perspective, and it's not the only expression of state will.¹⁰ Global influence is so great, allowing the policy direction of the country completely swept desired by global, ie the free market.

The state responsible for economic development, then seemed to disappear. The welfare of the people then become an issue that could be set aside for the sake of the freedom of the market. Freedom of the market will bring its own sovereignty, over the sovereignty of the people. Edi Swasono argues sovereignty if the market can not evicting the people's sovereignty.¹¹ The state will change into the corporate state, not the nation state.¹² The hope for economic development will be pushed by the free-market.¹³ But on the other hand, if the market efficiency and freedom pressed will turn off the creativity and economic growth.

The State then required to maintain a balance between the goals of state control with the freedom of the market. Article 33 UUDNRI 1945 to maintain the ideals of balance between control and freedom of the market. State control of the resource sectors for the prosperity of the people. Kwik Kian Gie concludes: there are many people believe Indonesia economic system has reformulated Become mutual cooperation.¹⁴ Formulations of this cooperation can be depicted in the relationship between the actors involved in the economy.

Jimly Asshiddiqie illustrates the triadic relationship of economic actors namely the state, the market, and society as follows:¹⁵



Source: Economic Constitution, Jimly Asshiddiqie

States are given a larger portion of the economy, than any other actor. Countries should not really take off in the market, or the public. Dominance over society or the market, will damage the balance and led to inequality. Inequality in the relationship will affect efforts to ensure the orderly realization of freedom, justice surely, and equitable prosperity.¹⁶ State thus have a responsibility to ensure a balance between each sector. Similar delivered by Thurrow, he ensures that the community will be a success, if there is a balance between individual and collective needs, and to achieve the country takes an active role as well as representatives of the people's interests.¹⁷ The idea of balance has revealed relatively successful in design if able to be realized in the legislation.

3.2 Balancing Legislation (socio-economic rights and investment) to Facing ASEAN Free Trade

Free trade era gives pressure on the perspective and legislation. Indonesia in the near future, will face the ASEAN Free Trade Area. The situation will bring Indonesia perspective become more pro with the market interest. The state, in the other side must reconsider for the only market interest. Interest of the people and state intervention, must clearly guaranteed. The legislation produk which has been made, must oriented to the protection of social and economic rights. Then, how far our legislation fulfill the responsibility to ensure socio-economic rights.

¹⁶ *Ibid*, page 378.

¹⁷ Milan Mesaric, Neoliberalism Vs. Planning As A Institute Of Socio-Economic Development, Montenegrin Journal of Economic, volume 8, issue 3, 2012, Montenegro: Ekonomska Laboratorija za Istrazivanje Tranzicije, page 23.

The observation for the economic-socio rights based legislation, will be start on the legislation after the reform. Type of legislation will be separated into state responsibility on welfare. How far the legislation ensure the socio-economic rights. The classification is based on the issue of each produk. The observation of the legislation, will be discuss based on periods.

After the reform (periods 1998-2004), issue of human rights protection are so strong and pledge, but in the other hand the issue of the protection of socio-economic rights, seems not so strong.

Legislation around 1998-2004
1. Law number 13/1998 about elderly welfare
2. Law number 39/1999 about human rights
3. Law number 21/2000 tentang labor union
4. Law number 23/2002 about child protection
5. Law number 13/2003 about man power
6. Law number 2/2004 about settlement of industrial relations
7. Law number 40/2004 tentang Social securities
8. Law number 41/2004 about Wakaf

As example, In the law number 39/1999 about human rights as the platform of human rights protection, it proved under the of human rights there is no complete recognition about economic rights. Economic rights are be regulated only by 4 (four) article, that is article 1 number 3, article 64, article 71 and article72. All of it just said about group discrimination on economic, child exploitation on economic, and unclear implementation about economic rights.

The uncertain guarantee also found in the legislation base on manpower and works issue. Overall the law related to man power and worker not fully protecting and empowering them. As an example on the law number 21/2001 about labor union, the state only guarantee the freedom to create a union. The unions welfare it depends on their performance, and state not involved in this condition. The unfair condition related to worker welfare is also found on the law number 13/2003 about man power. The interest of company is a priority beyond the manpower interest. The form of protection from the regulation based on workers issue, then will not fully protecting worker if facing the ASEAN Free Trade. The worker not only must

protected, but also must empowered. In the law number 25/2004 about national development planning, there is no clear clause for the society participation. Article 6 and 7 only provide society able to participate, but how to participate there is no clear sentence, in the end, development planning only on the government perspective. The participation of the people, are not accommodate by the regulation. The law around 1998-2004, its not clear to ensure socio-economic rights.

The laws around 2005-2010, also have many gaps on fulfillment socio-economic rights.

Periods 2005-2010
1. Law number 12/2005 about ratification of international covenant on civil and political rights
2. Law number 16/2006 about extension of agriculture, fishery and forestry
3. Law number 20/2008 about micro, small and medium enterprise.
4. Law number 36/2009 about health
5. Law number 52/2009 about population and family development.

Law number 12/2005 about ratification of the international covenant on civil and political rights. as the commitment of people rights. The problem is economic right of the citizen, is not guarantee by the regulation. In the Law number 16/2006 about the extension of agriculture, fishery, and forestry, we can conclude about the state strategy to improve the human resource on agriculture, fishery, and forestry. The local government has been delegate by the state, as the director of the extension. On the other side, we must concern about the type of the extension. The government must be ready to improve the participant not only to follow the program.

The social and economic responsibility of the state also provided on the micro and small economic. Law number 20/2008 about micro, small and medium enterprise provide the protection and empowerment of small, micro and medium economies. Article 7 describe the state response for the capital, facilities and infrastructure, information, licenses, promotion, partnership, and business opportunities. The aspects which have been describes must set on the challenge for the globalization.

The problem of unclear guarantee of social rights, also found in regulation about health. Law number 36/2009 about health, on the article 20 and 172 declare about government responsibility without clear provision. The management and state allocation, should be provided.

On the periods 2011-2016 there are 6 legislation products, which is related to state responsibility on the citizen welfare and economic.

Periods 2011-2016
1. Law number 13/2011 about the poor
2. law number 19/2013 about protection and empowerment of farmers
3. law number 3/2014 about the industry
4. law number 7/2014 about commerce
5. law number 7/2016 about protection and empowerment of fisherman
6. law number 8/ 2016 about disability.

First, the law number 13/2011 about the poor. The law provided a form of self-development, social aids, and legal. Development for the poor on economic, only provided on article 24. The view of poor people protection, only as social problems but the economic guarantee and development not provided.

In this periods, there also the legislation about farmer and fisherman empowerment. Law number 19/2013 about protection and empowerment of farmer, provide protection and empowerment for the farmer. Local government become central actor to empowerment and protection. The local government push the insurance for the farmer. It was very revolutionary movement to protect the farmer. Article 7,8 regulates local government responsibility to achieve the welfare program for the farmer. In the law number 7/2016 about protection and empowerment of fisherman, the role of local government also important to achieve the empowerment for fisherman. Article 13, 14, and 15 regulates the local government responsibility on planning and implantation of empowerment. This law on the other side, already recognizes the role of women. In the article 45, involvement and role of women being agenda of women. But how the strategy to ensure the empowerment of women is not clearly yet.

4. Conclusion

The research result describe the regulations used for facing AEC dominate by investment design and neglect the socio economic rights. Even there are many legislation, oriented for social welfare. The legislation, not truly clear on guarantee of socio-economic rights. The mainly problems, are the regulation always throwing responsibility to guarantee the rights. On the other side, the problems also about the value in every legislation, starting to only follow the interest and will of global and markets.

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